

**IN THE CLAIMS:** See the Listing of Claims. This listing will replace all prior versions of claims in the application.

### **REMARKS**

The applicants acknowledge the Examiner's comprehensive Office Action, as well as the telephonic interview of February 1, 2005, with appreciation. Claims 20-40 remain under consideration. The Office has withdrawn the finality of the previously issued Office Action. The Office maintains the previous claim rejections under 35 USC § 102(a) and 35 USC § 103(a). The previous claim rejection under 35 USC § 102(b) has been withdrawn.

The instant invention provides a toothbrush that, when placed on a flat horizontal support, always comes to a position where the bristles lie at a distance from the support and extend toward the support. Thus, in whatever position the user deposits the brush on the support, the brush will adopt a position in which the bristles point toward the support and are at a distance from it, and therefore, have little exposure to contact with other items. Moreover, when the bristles are wet, water drops may fall more quickly from the bristle ends and the bristles will dry more quickly than in any other position.

Claims 20-26 and 28-40 are rejected under 35 USC § 102(a) as being anticipated by Cano (US Patent No. 5,860,190). It is the position of the Office that Cano discloses various embodiments of elongate form (particularly in Figs. 8, 10, and 12), comprising a toothbrush with toothbrush bristles (if such implement is chosen) wherein on a flat horizontal support, there is at least one position of stable equilibrium in which the longitudinal direction of the brush is essentially parallel to the support and the bristles lie at a distance from the support and extend towards the support (if a user orients the bristles in this downwards direction).

With the instant amendment, Claim 20 has been amended to replace "wherein the toothbrush exhibits" to "wherein the toothbrush has" to clarify the features possessed by the instantly claimed toothbrush. The Applicants respectfully submit that Cano discloses a handle grip (16) in which an implement handle (20) may be

inserted. In the embodiments shown in Figures 8, 9, 10, and 12, the handle grip has one or several flat side(s) in order to prevent the implement from rolling, when placed upon an inclined surface (see columns 7 and 8). By making the assumption that the user will insert a toothbrush in the handle grip and orient the bristles in a downwards direction, the Office is adding information which is not disclosed in Cano. Thus, the disclosure of Cano does not anticipate the instant invention. Reconsideration and withdrawal of the anticipation rejection is respectfully requested.

Claims 20-24, 29-32, 37, and 38 remain rejected under 35 USC § 103(a) for obviousness based on Lodato (US Patent No. 5,956,796) in view of Switzerland 180027. Lodato discloses a toothbrush which has only one position of stable equilibrium when placed on a flat horizontal support. In the position of equilibrium disclosed in Lodato, the bristles extend opposite to the support. Switzerland 180027 discloses a toothbrush with four different positions of stable equilibrium. In one position of equilibrium, the bristles extend toward the support. In the other three positions of equilibrium, the bristles do not extend toward the support.

In the telephonic interview of February 1, 2005, the combination obviousness rejection based on Lodato (US Patent No. 5,956,796) in view of Switzerland 180027 was discussed with the Examiner. It is the position of the Examiner that Lodato discloses a toothbrush which spontaneously adopts a stable position of equilibrium such that the head is away from the flat surface. The Applicants maintained that Lodato explicitly discloses a toothbrush with bristles pointing away from the surface. The Examiner maintained his position that the Cano and Billeter references teach bristles pointing toward the surface and that these disclosures may be combined with Lodato to render the instant claims obvious. Although the Applicants pointed out that this analysis constitutes improper hindsight reasoning and that it is impossible to combine such contradictory teaching, the Examiner maintained that there is nothing unobvious about orienting bristles up and/or down.

The Applicants respectfully submit that the aim of the instant invention is to provide a toothbrush that reduces the risk of contact between the bristles and an external item and that neither Lodato or Switzerland 180027 addresses this problem. The

aim of Lodato is to avoid contamination of the toothbrush by incidental contact with the surface upon which the toothbrush is placed (column 1, lines 16-20). Therefore, Lodato discloses a toothbrush having a position of stable equilibrium with the bristles pointing upward, away from the support. The solution disclosed in Lodato consists generally of keeping the bristles as far away as possible from the support. The instant invention provides a toothbrush in which, in any position of stable equilibrium of the toothbrush on the support, the bristles extend toward the support, which is contrary to the teaching of Lodato. Therefore, Lodato teaches away from the instant invention.

The Applicants respectfully submit that the aim of Switzerland 180027 is to avoid that the handle and the head of the toothbrush come into contact with the support upon which the toothbrush is placed. Switzerland 180027 suggests a toothbrush having four different positions of stable equilibrium. In three of these positions, the bristles do not extend toward the support. Therefore, when the toothbrush is left on a horizontal support, the toothbrush takes equally one of the four positions of stable equilibrium. Switzerland 180027 does not favor any of the four positions of stable equilibrium. Moreover, Switzerland 180027 does not prevent the bristles from coming into contact with other objects. Therefore, Switzerland 180027 does not address the problem of reducing the risk of contact between the bristles and an external item.

The Office states that "it would have been obvious to one having ordinary skill in the art to have modified Lodato's bristle arrangement such that the bristles extend toward the support as suggested by Switzerland 180027 for the purposes of preventing the bristles from coming into contact with other objects or just to simply permit improved drainage of water by gravity from the bristle after usage." The Office also states that "in this case, given Switzerland 180027 and Lodato '796, taken as a whole, orienting the bristles toward the support would be obvious for the purpose of preventing the bristles from coming into contact with other objects or just to simply permit improved drainage of water by gravity from the bristles after usage."

The Applicants respectfully submit that the Office has formulated the technical problem to be solved by using parts of the solution provided by the instant invention,

i.e., preventing the the bristles from coming into contact with other objects and/or permitting improved drainage of water by gravity. Therefore, when formulating the problem, the Office already favors one position of equilibrium wherein the bristles extend toward the support, whereas Switzerland 180027 discloses four positions of stable equilibrium and does not favor any of them. Lodato suggests only one position of stable equilibrium wherein the bristles are pointing upward, away from the support. Lodato indicates that this position of stable equilibrium avoids contamination from the surfaces (columns 1 and 2). Therefore, Switzerland 180027 and Lodato, taken as a whole, suggest a toothbrush with bristles pointing upward, away from the support, in order to avoid contamination from the surface. Thus, Switzerland 180027 and Lodato, taken as a whole, do not teach, disclose, or suggest a toothbrush, in which, in any position of stable equilibrium on the toothbrush on the support, the bristles extend toward the support. Reconsideration and withdrawal of the obviousness rejection is respectfully requested.

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Accordingly, entry of the present amendment, reconsideration of all grounds of objection and rejection, withdrawal thereof, and passage of this application to issue are all hereby respectfully solicited.

It should be apparent that the undersigned attorney has made an earnest effort to place this application into condition for immediate allowance. If he can be of assistance to the Examiner in the elimination of any possibly-outstanding insignificant impediment to an immediate allowance, the Examiner is respectfully invited to call him at his below-listed number for such purpose.

Allowance is solicited.

Respectfully submitted,  
THE FIRM OF HUESCHEN AND SAGE

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